IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4832 OF 2001

R.S.Abraham..... .....
Petitioner
V/s
Vidya Prasarak Mandal & Ors..... .....
Respondents.

Dr.V.K.Chowdhari, Adv. for the petitioner.

Mr.R.B.Jaiswal, Adv. For respondent Nos. 1 & 2.

Mr.M.H.Solkar, AGP for respondent Nos. 3 & 4.

CORAM: A.P. DESHPANDE, J.
14.6.2007

PC:

Rule.

Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

The respondent-school management issued an advertisement for filling in the post of Head Master. Pursuant to the said advertisement the petitioner applied for the same as he was eligible and qualified for being appointed as Head Master. The petitioner was issued order of appointment appointing him on probation for a period of two years. The probation period was extended by the management from time to time. As the department of education did not grant approval to the appointment of the petitioner as Head Master the respondent-management was constrained to terminate his service and proceeded to terminate. Aggrieved by said termination the

petitioner filed an appeal before the School Tribunal, inter alia, contending that on completion of probation period under section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (the "Act") the petitioner was entitled to confirmation and the termination of the petitioner was not permissible. The education department has declined to grant approval to the appointment of the petitioner as Head Master solely for the reason that under the scheme of the act appointment to the post of Head Master can only be made by granting promotion to the senior most eligible teacher working in the same school. Only in exceptional situation which is covered by rule 3(5) an outsider can be appointed. Sub-section (5) of Rule 3 provides that if a suitable teacher possessing qualification laid down is not available to fill in the post of Head the Management shall with prior permission of the Deputy Director of Education advertise the post, select and appoint a person possessing requisite qualification and experience. The respondent-management did not seek approval from the Deputy Director of Education to advertise the post. The petitioner had contended before the Tribunal that school in a question was minority school administered by linguistic minority of Kannad speaking people and hence by virtue of section 3(2) the provisions of the Act and rules have no application while filling in post of Head by recruitment. The Tribunal has recorded finding of fact that the petitioner-appellant has failed to establish that the school in question is minority school and hence the provisions of the Act and Rules would apply and if provisions of Rules and Act would apply then it is obvious that the management ought to have advertised the post of Head only after

seeking prior approval of the Deputy Director of Education. In the present case appointment of the petitioner was made in violation of the provisions of Rule 3(2)in as much as instead of appointing senior most qualified teacher from the same school, an outsider was appointed that too when the situation was not covered by sub-rule 5 and without seeking permission from the Deputy Director of Education. The appointment was as such bad in law. Learned counsel for the petitioner submits that the management had issued advertisement and in pursuance of the same the petitioner applied for the post. The petitioner was not aware as to whether other eligible teachers were there in the school or otherwise. The petitioner had sought appointment pursuant to the advertisement issued by the management and as such the management need to be estopped from contending that the appointment made by it was bad in law. It is thus submitted that the School Tribunal has erred in dismissing the appeal. Learned counsel for the respondent-management on the other hand submits that there were many other teacher eligible and qualified to hold the post of Head working in the concerned school. It is further stated that the respondent-management was and is not recognised by department as minority education institution. And lastly it is submitted that assuming that the termination of the petitioner was not legal still in the facts of the present case relief of `reinstatement ought not be granted and at the most recourse could be had to provisions of section 11(2)(e) of the Act and the petitioner can be granted compensation by directing payment of salary for a period of six months. As I am of the view that the very appointment of the petitioner was contrary to rules he

does not acquire any right to the post in question and assuming for the sake of argument even if it is assumed that the appointment of the petitioner was valid and the termination bad in law, still petitioner need not be granted relief of reinstatement for the obvious that other eligible and qualified teachers working in the said school would stand to loose chance of promotion to the post of Head. Hence no relief of reinstatement can be granted and the relief can be moulded as suggested by leaned counsel for the respondent-management. In the result writ petition is partly allowed. The impugned order passed by the School Tribunal stands modified only to the limited extent by directing respondent No.1 to pay six months' salary(Pay & Allowance) by way of compensation as permissible under section 11(2)(e) of the Act. The amount of compensation shall be paid within a period of eight weeks from today. Rule made absolute partly in above terms.

14.6.07.